

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>Midwest Independent Transmission System Operator</b>	)	<b>Docket No. ER02-108-000</b>
	)	
<b>Alliance Companies</b>	)	<b>Docket No. RT01-88-010</b>
	)	<b>(not consolidated)</b>
<b>Ameren Corporation on behalf of:</b>	)	
<b>Union Electric Company</b>	)	
<b>Central Illinois Public Service Company</b>	)	
	)	
<b>American Electric Power Service Corporation</b>	)	
<b>On behalf of :</b>	)	
<b>Appalachian Power Company</b>	)	
<b>Columbus Southern Power Company</b>	)	
<b>Indiana Michigan Power Company</b>	)	
<b>Kentucky Power Company</b>	)	
<b>Kingsport Power Company</b>	)	
<b>Ohio Power Company</b>	)	
<b>Wheeling Power Company</b>	)	
	)	
<b>The Dayton Power and Light Company</b>	)	
	)	
<b>Exelon Corporation on behalf of:</b>	)	
<b>Commonwealth Edison Company</b>	)	
<b>Commonwealth Edison Company</b>	)	
<b>of Indiana, Inc.</b>	)	
	)	
<b>First Energy Corporation on behalf of:</b>	)	
<b>American Transmission Systems, Inc.</b>	)	
<b>The Cleveland Electric Illuminating Co.</b>	)	
<b>Ohio Edison Company</b>	)	
<b>Pennsylvania Power Company</b>	)	
<b>The Toledo Edison Company</b>	)	
	)	
<b>Illinois Power Company</b>	)	
	)	
<b>Northern Indiana Public Service Company</b>	)	
	)	
<b>Virginia Electric and Power Company</b>	)	

**COMMENTS OF THE  
ILLINOIS COMMERCE COMMISSION**

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.211, the Illinois Commerce Commission ("ICC") hereby submits its Comments on the filing submitted by the Midwest ISO in Docket ER02-108-000 and by the Alliance Companies in Docket RT01-88-010. In support hereof, the ICC states as follows:

**I. INTRODUCTION/BACKGROUND**

On October 15, 2001, the Midwest ISO tendered for filing its proposed Market Monitoring Plan.

On October 16, 2001, the Alliance Companies tendered for filing (1) proposed alternate tariff sheets reflecting the proposed withdrawal of International Transmission Company ( "ITC" ) from the Alliance, (2) proposed substitute tariff sheets reflecting corrections to certain tariff sheets filed by the Alliance Companies on August 31, 2001 and September 10, 2001, (3) supplemental testimony and revised exhibits supporting the proposed alternate tariff sheets and the proposed substitute tariff sheets, (4) Attachment O, Market Monitoring Plan, (5) revised Attachment J, Reservation and Scheduling Procedures, and (6) additional contracts under Attachment X to the OATT. The Alliance Companies request that the proposed substitute tariff sheets, proposed alternate tariff sheets, and original tariff sheets become effective on December 15, 2001.

In its Cover Letter (at 2), the Midwest ISO explains that the Market Monitoring Plan was developed, with stakeholder input, by Dr. David Patton of Potomac Economics. The Alliance Companies also mention in their Cover Letter (at 11) that the Market Monitoring Plan was

prepared with “significant input” from stakeholders. The Inter-Regional Cooperation Agreement (“IRCA”) between the Midwest ISO and the Alliance Companies requires the development of a joint market monitoring process. See, *Illinois Power Company et al.*, 95 FERC 61,183 (2001) (approving settlement agreement, which included the IRCA as an attachment).

The ICC’s Comments herein are limited to addressing the Market Monitoring Plan submitted by the Midwest ISO and by the Alliance Companies. The ICC recommends that the Commission consider the Market Monitoring Plan in the Midwest ISO and Alliance dockets in a coordinated manner, given that the identical Plan was filed in each docket.

The ICC notes that a coalition of state commissions filed joint Comments in Midwest ISO Dkt. ER02-108-000 on November 5, 2001. The ICC also understands that a group of state commissions plans to file similar Comments in Alliance Companies’ Docket RT01-88-010. The ICC intends its Comments herein to supplement, rather than conflict with, those joint state comments.

The ICC recognizes that there is some desire among stakeholders to move the Midwest ISO toward operational start-up as expeditiously as possible, either as an approved RTO or under existing authority as a not-yet-Order 2000 compliant ISO. However, such operational start-up should not be permitted until there is a meaningful market monitoring plan in place and approved by the Commission. While the Market Monitoring Plan filed by the Midwest ISO on October 15, 2001 has many flaws, as will be demonstrated herein, it may be possible for the Commission to correct enough of those flaws in the short-run to allow the Market Monitoring Plan to be put in place temporarily to permit the Midwest ISO to start-up as an ISO (i.e., without RTO authorization).

However, as explained in Section II below, the major flaw in the Market Monitoring Plan is a conceptual design problem that flows out of the market monitoring framework in Order 2000. The ICC recognizes that it will take a considerable amount of time to correct that conceptual design problem. The ICC does not believe Midwest ISO start-up needs to be held hostage to achieving long-term resolution of this market monitoring conceptual design problem.

Consequently, the ICC recommends that the Market Monitoring Plan may only be permitted to temporarily go into effect on the following conditions: (1) clarification of the description of “market power” as recommended in Section III.B; (2) revision of the Plan to include limited market power mitigation authority for the market monitor as described in Section III.D; (3) modification of the Plan to ensure clear access by State commissions to market monitor data and information as described in Section IV.B; and (4) modification of the Plan language in all of the areas discussed in Section V.

However, the ICC recommends that the Market Monitoring Plan not be given final approval, either for the Midwest ISO or the Alliance Companies, until the modifications to the basic market monitoring framework described by the ICC in Section II of these Comments is addressed by the Commission and corrected by the applicants. Because independence and impartiality of the market monitor is so critical to engendering trust among the stakeholders in the legitimacy of the market monitoring process, the issue of market monitor independence from the RTO (as described by the ICC in Section II) must be addressed before either the Midwest ISO or the Alliance RTO can receive authorization as an approved RTO.

## **II. MARKET MONITOR INDEPENDENCE**

### **A. The Order 2000 Framework for Market Monitor Selection and Oversight Requires Reform to Better Address the Market Monitor Independence Issue**

Order 2000 assigns the market monitoring function to the RTO. See, Order 2000 at 461-466. Indeed, Order 2000 makes market monitoring one of the required RTO functions. Rule Section 35.34(k)(6). As the ICC will demonstrate herein, both in principle and with concrete examples from the MISO/ARTO/SPP Market Monitoring Plan, market monitor independence cannot be achieved in circumstances where: (1) the responsibility for market monitoring is placed on the RTO; (2) the RTO is charged with selecting the market monitor; (3) the RTO is charged with overseeing the market monitor; and (4) the market monitor is required to report to the RTO. In short, it will be impossible for the market monitor to be independent of the RTO if the market monitor is part of, or an agent of, the RTO.

The responsibility for ensuring a competitive electric market structure and enforcing competitive behavior is a fundamental one for the relevant government authorities, principally FERC and the state commissions. Indeed, the Commission acknowledged in Order 2000 that, “Under the FPA, the Commission has the primary responsibility to ensure that regional wholesale electricity markets served by RTOs operate without market power.” Order 2000 at 464. State Commissions also have important roles and responsibilities concerning market design and the operation of electricity markets. For example, under Illinois Law, the ICC has been directed to “promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers.” PUA Section 16-101A(d). Illinois Law also states that, “A competitive wholesale and retail market must benefit all Illinois citizens.” *Id.* Indeed, the Commission recognized the states’ role in Order 2000 by observing that state commissions “protect the interests of retail consumers, especially where they are overseeing the development of a competitive electric market.” Order 2000 at 464-465.

However, in making the market monitoring function a responsibility of the RTO, the Order 2000 framework for market monitor selection and oversight fails to properly engage the responsibilities of the FERC or the State commissions. Accordingly, as will be demonstrated herein, the likelihood of achieving market monitoring independence under this framework is severely called into doubt.

**B. The Selection and Oversight Provisions of the MISO/ARTO/SPP Market Monitoring Plan Designed Under the Order 2000 Framework will Prevent Independence of the Market Monitor from the RTOs**

The ICC recognizes that some ostensible effort has been made by MISO/ARTO/SPP to fulfill the market monitoring functions that Order 2000 places on them through use of a contract agent rather than conducting market monitoring as an internal function of the RTO. This is some small progress. Nevertheless, the independent market monitor (“IMM”)<sup>1</sup> selection and oversight aspects of the Plan are flawed because they flow from the poorly designed Order 2000 market monitoring framework.

It is critically important for the ICC and for the public interest that an effective market monitor selection and oversight process be put in place. It is the ICC’s position that, to be effective, the Midwest Market Monitor must be: (1) truly independent of both market participants and the RTO; (2) knowledgeable, experienced, and capable; and (3) willing and able to facilitate a smooth transition to subsequent market monitors. But, of these characteristics, the bedrock characteristic is independence.

**1. IMM Selection Process**

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<sup>1</sup> Independent market monitor (“IMM”) is the term used in the Plan. As explained herein, the ICC does not believe that the Plan is well-designed to achieve real independence for the market monitor.

Section 4.1 of the Plan provides that, “The Cooperating RTOs shall retain a firm to be known as the Independent Market Monitor.” This is a critical flaw as the ICC will explain below, because the IMM cannot be expected to be independent if it is selected by the RTO.

Beyond this failure in the IMM selection design, however, the specific process followed by MISO/ARTO/SPP that led to Potomac Economics/Dr. Patton’s selection by MISO/ARTO/SPP was, and remains, almost entirely opaque. The RFP requirements and the selection criteria employed by MISO/ARTO/SPP remain unknown to the ICC. The contract between MISO/ARTO/SPP and Dr. Patton has not been publicly released. This RTO-controlled black box approach is not well-designed to give market participants and other stakeholders confidence in the independence, impartiality, or capability of the selected market monitor.

Despite the flaws in the market monitor design framework and the lack of transparency in the specific process under which MISO/ARTO/SPP selected Potomac Economics/Dr. Patton as the first Midwest market monitor, the ICC is not herein challenging Dr. Patton’s selection. Upsetting the current progress on Midwest market monitoring by challenging Dr. Patton’s selection would be disruptive and unnecessary. The ICC expects that Potomac Economics/Dr. Patton can be an effective, and independent, Midwest market monitor once the changes to the market monitoring framework and Plan, described by the ICC below, are implemented.

## **2. IMM Oversight Process**

The Plan contains numerous examples of how the IMM oversight framework and process is critically flawed and how it directly threatens the ability of the IMM to act independently. For example, Section 4.3 of the Plan enumerates the responsibilities of the IMM. According to section 4.3(1), the IMM shall “advise the Cooperating RTOs . . . on the nature and extent of, and any impediments to, competition in and the economic efficiency of the Cooperating RTOs’

Markets and Services.” (emphasis added.) Section 4.3(3) requires the IMM to “Recommend to the Cooperating RTOs modifications to market rules, tariffs, or other corrective actions to improve the competitiveness or efficiency of the Cooperating RTOs’ Markets and Services.” (emphasis added.) Section 4.3(4) requires the IMM to “Recommend to the Cooperating RTOs modifications to market rules or tariffs to improve the compatibility of the Cooperating RTOs’ Markets and Services or improve the efficiency of trading between the Cooperating RTOs’ areas.” (emphasis added.)

This quoted language reflects the Plan’s fundamental design that makes the IMM an agent of the RTOs, rather than an agent of FERC and an advocate of the public interest. This RTO/market monitor agency relationship is an inherent design flaw that ensures that the IMM cannot be independent of the RTOs. This flaw flows directly from Order 2000 which places the responsibility for market monitoring on the RTO. This flaw will make it very unlikely that market monitor independence from the RTO can be achieved.

Indeed, the first enumerated item in Section 1.1 of the Plan (Purposes and Objectives) is the monitoring of the markets and services of the cooperating RTOs. In straightforward terms, the first “purpose and objective” of the Plan is for the market monitor to monitor whether the RTOs are properly doing their jobs. It is not reasonable to expect an IMM structured as a direct agent of the RTO (hired by the RTO, paid pursuant to a budget set by the RTO, and reporting to the RTO) to be an unbiased evaluator of the RTO.

While a properly designed RTO will not be a “market participant” as defined in Order 2000-A, nevertheless, the actions or inactions of the RTO will have a major effect on the market



and on market participants.<sup>2</sup> Furthermore, as explained in Section II.C below, RTO independence is not a zero or one matter. Rather, RTO independence constitutes a point on a multi-dimensional continuum (and the point on the continuum will likely move over time). For these reasons, it is appropriate for the IMM to monitor the RTOs. Consequently, it naturally flows that, to properly monitor the RTOs, the IMM must be independent of the RTOs.

#### **a. Market Monitoring Committee**

Section 3.1 of the MISO/ARTO/SPP Market Monitoring Plan establishes a Market Monitoring Committee (“MMC”) consisting of one representative from each Cooperating RTO “to carry out the functions described in this Plan.” Section 3.1 appears to establish the MMC as the contact and liaison between the cooperating RTOs and their agent, the IMM. However, it clearly provides for the MMC, rather than the IMM, “to carry out the functions described in this Plan.” Even though the MMC, itself, does not have extensive, direct decision making authority, it, nevertheless, has a significant role as representative/delegate of the cooperating RTOs given its responsibilities listed in Section 3.2 of the Plan. For example, Section 3.2(4) makes the MMC responsible to “coordinate the evaluation of the need for corrective measures, including but not limited to rule or tariff changes.” Recommendations to change an RTO’s rates and tariffs strike directly at the heart of an RTO’s revenue generating capability. The IMM must have complete independence to make such recommendations as it sees fit. Section 3.2(4), however, imposes improper oversight over the IMM by the MMC concerning these matters. If the IMM finds a need for RTO “tariff changes,” and FERC agrees, the MMC’s assigned responsibility to

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<sup>2</sup> According to 18 CFR 35.34(b), a properly designed RTO will not meet the definition of market participant unless the Commission finds that it has “economic or commercial interests that would be significantly affected by the Regional Transmission Organization's actions or decisions.”

“coordinate the evaluation of the need for corrective measures” can be seen as nothing less than an attempt to block needed and ordered tariff modifications.

The other responsibilities of the MMC enumerated in Section 3.2 also illustrate the improper oversight role of the MMC as representative of the RTOs. As argued herein, allowing the RTOs to exercise oversight over the IMM, either directly or through a representative such as the MMC, does not constitute a workable framework for IMM independence. The responsibilities of the MMC in Section 3.2, as representative of the RTO, starkly illustrate the flaws in this design.<sup>3</sup>

#### **b. IMM Reporting**

If further illustration of these IMM oversight design flaws is necessary, Sections 9.1 and 9.2 of the Plan provide it. According to Section 9.1, “the IMM shall prepare and submit to the Market Monitoring Committee at least an annual report on the competitive performance and efficiency of the Cooperating RTOs’ markets and services.” In the same section, it is also stated that, “Copies of the report shall be made publicly available by the Cooperating RTOs, subject to redaction or other measures necessary for the protection of Protected Information.” These provisions demonstrate that, despite its strained patina of “independence,” the IMM is, in reality, directly reporting to the MMC. As explained above, the MMC is simply a representative of the cooperating RTOs. Therefore, the whole process of market monitoring, as framed in the Plan, can be summed up as the IMM reporting to the RTOs. That is not a prescription for independence.

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<sup>3</sup> As explained in Section V below, even if the Commission fails to act to correct the fundamental IMM oversight design flaws described in this Section to eliminate oversight of the IMM by the RTO and its delegate the MMC, the MMC should, nevertheless, be eliminated because it serves no useful purpose.

Section 9.2 reflects these same flaws by requiring the IMM to submit its reports to the MMC for release by the RTOs. Assignment of that responsibility to the RTO implies that the RTO has access to the IMM reports prior to all other interested parties and further illustrates the improper role of the RTO as IMM gatekeeper. Section 9.2 also gives the MMC authority that no other nongovernmental party has to request the IMM to prepare reports. That provision could easily result in tying up the IMM in a search for facts and the conduct of analyses and the preparation of reports that are likely to support and advance the agenda of the RTOs. With for-profit RTOs, this type of one-sided authority to seek and guide IMM analyses might easily lead to the production of reports that artificially reflect favorably on transmission solutions for congestion management—thus, potentially, enriching the RTO at the expense of more efficient market solutions.

The IMM reporting relationship must be changed in order to achieve IMM independence. At a minimum, all IMM reports must be directly submitted to the Commission, rather than to the RTOs. Modifying the Plan to change who receives reports from the IMM is a necessary, but not sufficient, condition for the IMM to obtain independence.

**C. Charging the RTOs With Responsibility to Monitor the Market Creates Unnecessary Challenges to the RTOs' Independence From Market Participants**

Order 2000 requires RTOs to be independent of market participants. (18 CFR 35.34(j)). However, independence of an RTO from market participants is not a variable that only takes on values of zero and one. Rather, it is more like a continuum and there are many levels of, and dimensions to, RTO independence. In approving an RTO compliance plan in satisfaction of Order 2000's independence criterion, the Commission will implicitly be choosing a threshold level of independence that it feels comfortable with, rather than making a finding of one hundred

percent RTO independence from market participants. In essence, the Commission will be making a decision about whether an RTOs' proposed design is likely to achieve a threshold level of independence.

However, independence is not a static characteristic. Rather, individual market participants and classes of market participants with common interests will likely attempt to chip away at the independence of the RTO over time. This is of particular concern where the transmission owner class also has generation or marketing interests (i.e., where transmission is not completely divested from generation and marketing).

Therefore, the Commission should be try to establish an RTO structure that minimizes the pressure points market participants may bring to bear on RTOs that will lead to attrition in RTO independence. Locating the market monitoring function within the RTO, or establishing it as a contract agent of the RTO, creates a large avenue of vulnerability for the RTO's independence from market participants. For example, market participants will bring pressure to bear on the RTO concerning IMM selection in an attempt to skew the process in their favor. Similarly, pressure will be brought to bear on the IMM and the RTO to prepare studies that will reflect favorably on particular market participants or classes of market participants. Over time, these pressures will likely chip away at the RTO's independence.

It will be difficult enough for the RTOs to obtain and maintain independence from market participants. Piling the market monitoring function on top of their already considerable responsibilities will make the RTOs just that much more vulnerable to being co-opted. A much superior model would be to place the market monitoring function on the Commission and on state commissions who have, over numerous years of experience, developed a strong independence culture.

**D. ICC Proposal to Establish the Market Monitor as a Contract Agent of the FERC, Rather than a Contract Agent of the RTO**

The best way to accomplish independence and the other market monitor objectives described above is to establish a framework in which the market monitor is a contract agent of the FERC, rather than a contract agent of the RTO, as is currently the case in the MISO/ARTO/SPP Plan. The market monitoring function could also legitimately be set up as an internal function of the Commission. However, because of the time necessary to staff-up to internally perform this function and because necessary expertise (fortunately) already resides in the private sector, the contracting option appears more practical.

The ICC suggests the following approach.<sup>4</sup> The Commission is responsible for issuing the request for proposals (“RFP”) concerning market monitoring services to all prospective contractors (and to the public). The Commission chooses the market monitor by applying previously agreed to criteria and by soliciting advice from market participants and all other interested parties. The Commission decides on the budget for market monitoring using advice from market participants and all other interested parties. The Commission contracts with the winning bidder for specified market monitoring services. The Commission decides on the contract terms, including specified performance standards, using advice from market participants and all other interested parties. The cost of market monitoring is then passed through to transmission customers as a separate line item on RTO transmission bills (similar to the current administrative charge adjustment (“ACA”) used to recover FERC regulatory costs). To the extent they believe the FERC is expending too little or too much effort or money on market

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<sup>4</sup> The proposed role for state commissions as uniquely situated “interested parties” in this process is described in Section IV.C below.

monitoring, market participants and all other interested parties would have recourse through complaint to FERC concerning the published contract and market monitoring charges.

Implementation of this proposed model would contribute greatly to ensuring independence of the IMM, while still attaining all of the other beneficial IMM objectives. This design will make the IMM more credible in the eyes of the market participants and other stakeholders as explained above.

The ICC notes that on September 28, 2001, the Commission initiated a generic proceeding in Dkt. No. RM01-12-000 titled “Electric Market Design and Structure.” The Notice initiating the proceeding states that the Commission will “begin the process of developing a rulemaking on the market design and structure to be implemented through a pro forma tariff applicable to all public utilities and RTOs.” September 28 Notice at 1. Market monitoring is an important aspect of “market design and structure.” The market monitoring framework requires modification to ensure independence of the market monitor from the RTO. To the extent that the Commission does not modify the market monitoring framework for the Alliance RTO and Midwest ISO in the RTO specific proceedings in which the ICC is filing its current Comments, the ICC recommends that the Commission consider the ICC’s recommended changes in Dkt. No. RM01-12-000.

### **III. IMM FUNCTIONS**

The IMM’s principal functions should be to: (1) monitor for market power conditions; (2) identify the exercise of market power; (3) evaluate market structure and (4) mitigate the exercise of market power under limited circumstances.<sup>5</sup>

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<sup>5</sup> It is not necessary for the IMM to report to the RTO in order to successfully perform any of these functions. The only circumstance in which such a direct reporting relationship may be appropriate is when the IMM is charged with the responsibility to monitor whether market participants are complying with the RTO’s tariff and business

#### **A. Monitoring for Market Power Conditions**

The IMM must monitor conditions in the markets to assess the likelihood of the exercise of market power and to try to predict the ways in which market power may be exercised. Such monitoring should produce reports with appropriate recommendations to proper government authorities.

#### **B. Identifying the Exercise of Market Power**

In order to identify the exercise of market power, there must exist a usable definition or description of market power. Presumably, this is a primary purpose of the indices and screens provided for in Section 7 of the Plan. However, no particular index or screen is identified in Section 7 of the Plan, nor is any application identified for the to-be-developed screens. Consequently Section 7 is of very little use in discerning the IMM's plans and methods for identifying the exercise of market power.

The ICC recommends that Section 7 of the Plan be revised to include a detailed description of market power. In his speech during the Friday afternoon session of the FERC's RTO Week, Dr. Paul Joskow stated that "...this is not a new idea that electricity markets may have market power problems, nor is it necessary to reinvent the wheel when it comes to applying techniques for diagnosis for measurement and for mitigation. I think it's important for the Commission and for the Staff to recognize that and to try to apply best practice that's been used in other contexts." Friday Transcript at 128. The ICC recommends that the Plan reflect Professor Joskow's suggestions and include a description of market power and a commitment to employ "best practices" concerning market power identification, measurement and mitigation.

#### **C. Evaluating Market Structure**

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practices. However, the ICC does not support providing such a responsibility to the IMM. Rather, it should be the

The IMM must constantly evaluate whether the existing industry structure and market design establish a workable framework in which competition can thrive. Such monitoring should produce reports with appropriate recommendations to proper government authorities.

**D. Mitigating the Exercise of Market Power Under Limited Circumstances**

The Plan, apparently, gives no mitigation or enforcement authority to the IMM. Indeed, Section 4.3 provides that, “The IMM shall not have the authority to impose sanctions, penalties or fines.

The ICC believes that it will be useful for the IMM to have limited and clearly defined market power mitigation authority. The Commission should delegate such authority to the IMM if the IMM is able to satisfy certain FERC-established standards.

The ICC recognizes that providing the IMM with any market power mitigation authority is a very controversial issue and many interested parties are concerned that an IMM might abuse such authority. However, it is our belief that such concerns about IMM abuse of the authority to exercise market power mitigation can be satisfactorily addressed. Furthermore, the ICC expects that, if the Commission adopts the ICC’s proposal to make the IMM a contract agent of the FERC rather than a contract agent of the RTO, many concerns about delegating market power mitigation authority to the IMM will dissipate.

The ICC bases its expectation in this regard on the observation that market participants do not currently have a great deal of confidence that the RTOs are going to be, and remain, independent of transmission-owning utilities having generation and/or marketing interests. If there is lack of trust in the independence of the RTO, and the IMM is an agent of the RTO, then it is not likely that there will be trust in the independence of the IMM. If the IMM is not

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RTO’s responsibility to ensure that its tariff and business practices are being complied with.



perceived to be independent, then there will be strong resistance on the part of market participants to provide the IMM with market power mitigation authority, because there will exist great fear that the IMM will apply its authority discriminatorily.

The ICC believes that the IMM will be in a unique position to address the exercise of market power. The IMM will be in a unique position due to its proximity to the operation and functioning of the markets and the valuable real-time information to which the IMM will have access. Furthermore, the IMM would be able to quickly address the problem because of its familiarity with the issues.

However, any mitigation authority delegated to the IMM should be clearly defined and limited to application in emergency situations. The IMM should be able to intervene and mitigate when a real-time situation is leading to a point where damage done cannot be repaired afterwards.<sup>6</sup> Even in those cases, the tools available to the IMM (e.g. capping prices, ordering generators to run, etc.) should be clearly limited, clearly defined and be common knowledge among market participants.

Extreme-looking prices in power markets are generally induced by one of, or a combination of, the following three conditions: market participant misconduct (i.e., exercise of market power), flawed market design, or adverse economic conditions extant in the markets. Participant misconduct refers primarily to collusion between market participants, capacity withholding, artificial high bidding and other forms of market power exercise. Market design generally refers to the rules and regulations that govern bidding, contracting, settlement, price

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<sup>6</sup> In general, there will be ex post remedies available to apply to market participant actions taken in a market emergency. However, it may not be possible to set right market participants who would have taken a certain position, but did not take it because of some other market participant's exercise of market power.

formation and how different markets fit together. Economic conditions, are generally meant to imply production costs, generation and transmission capacity availability, load profile, etc.

The ICC suggests that the IMM have real time and short-term mitigation authority when it sees malfunctioning markets due to market participant misconduct. The IMM should have the authority to order a market participant to cease and desist in that conduct, in order to prevent a stir-up in the market that would cause potentially irreparable damage.

However, the IMM should not have authority to enforce market participant behavior *ex ante*. Specifically, the IMM should not be permitted to intervene in a market where suspicion exists about the ability of market participants to exercise market power. Furthermore, it should not be within the scope of the IMM's responsibility to require market design changes or to mitigate conditions conducive to the exercise of market power. In these areas, an IMM reporting function (with recommendations to appropriate government authorities) is adequate.

In addition, the IMM should not be authorized to intervene in the markets when prices are high due to reasons other than participant misconduct. For example, if demand for power is very high on a hot summer afternoon and that demand is barely met due to generation and transmission capacity shortages, then the high price for power may reflect the underlying economic conditions and this should not necessarily be a case for the IMM to correct. Once again, under these circumstances, it would be appropriate for the IMM to issue reports, with recommendations, to appropriate government authorities.

#### **IV. ROLE OF STATE COMMISSIONS**

##### **A. The ICC Seeks to Work with FERC to Advance Our Common Market-Enhancing Goals**

As stated above, state commissions have a vital role in looking out for the interests of retail electric consumers, especially where the state commission is overseeing the development

of a competitive retail electric market. However, this direct retail responsibility is ineluctably entwined with state commissions' interests in development of a competitive wholesale electric market. As recognized by the Illinois Legislature, "A competitive wholesale and retail market must benefit all Illinois citizens." PUA Section 16-101A(d). Emphasis added. Accordingly, the Illinois Public Utilities Act directs the ICC to "promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers." Id.

The legislatures in several Midwest states, such as Illinois, have decided to replace traditional regulation with competition as the mechanism to protect retail customers from the exercise of market power in the provision of electricity supply. The tool that such states will use in ensuring that competition is working to deliver hoped-for benefits to retail customers is, in general, market monitoring. This is true regardless of whether or not the State undertook a detailed up-front forecast analysis of the likelihood that viable retail competitive conditions will exist on the ground on the date that the retail market is effectively deregulated. In Illinois, that critical date is January 1, 2005, because that is the date on which the legislatively imposed retail rate freeze expires.

It is important to Illinois that workably competitive market conditions be established as soon as possible and that an effective wholesale market monitoring regime and an effective retail market monitoring regime be put in place as soon as possible. However, it is absolutely crucial that such conditions be in place prior to January 1, 2005. From that date forward, Illinois retail customers will have recourse to very little effective direct regulatory control over retail power prices for relief from a flawed market design or from the exercise of market power. Viewing the next 37 months from our current perspective, there is much work to be done and little time for unnecessary and self-defeating inter-jurisdictional squabbles. The ICC is committed to

establishing an effective retail market monitoring capability. Furthermore, the ICC stands ready and eager to work with the Commission to develop an effective wholesale market monitoring structure and to advance our common market-enhancing goals. The ICC wants competitive electric market results—and quick.

## **B. State Commission Access to Data and Information**

In the course of performing its Commission-imposed market monitoring duties, the IMM will unavoidably gather data and information critical to assisting state commissions in their role of protecting retail customers and monitoring the competitiveness of electric markets. Indeed, much of the information required by state commissions to perform their market monitoring functions is the same information that the IMM will use in performing its market monitoring responsibilities. In order to prevent unnecessary duplication of data and information gathering functions, economic efficiency militates in favor of state commissions being provided access to all data and information collected by the IMM.<sup>7</sup> An individual state commission or group of state commissions could then use the data and information provided to it by the IMM, perhaps in combination with data and information that the state commission collects through other available channels, to conduct its own market power analyses or market structure analyses.

Unfortunately, this desirable approach appears to be thwarted by the provisions of the Plan. Section 6.3 provides that the IMM shall provide to state commissions any data and information that it has gathered from the cooperating RTOs only to the extent that such provision is consistent with the “information policy” of the RTO from whom the IMM obtained the data and information. These “information policies” are unidentified. This provision is not acceptable

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<sup>7</sup> As explained in Section V below covering Section 6 of the Plan, it is reasonable to expect a state commission seeking confidential information that the IMM gathered from a market participant to enter into a protective order or other measure to protect the confidentiality of such data.

as explained in Section V below. State commissions must have unlimited access to all data and information gathered by the IMM from the cooperating RTOs.

However, the ability of state commissions to access useful IMM data and information is even more narrowly restricted with respect to data and information that the IMM has gathered from a market participant, rather than an RTO. Section 6.3 of the Plan provides that the IMM may release such data and information to the state commission only to the extent that the market participant from whom the IMM gathered such data gives “prior written consent.” This provision is unacceptable and ensures, as a practical matter, that state commissions will not be able to obtain such data and information. The ICC proposes alternative language in Section V below to address this problem.

Beyond the public interest benefits of state commissions having access to all IMM data and information, however, even greater economic efficiencies could be obtained if the state commissions were provided with the option of using the IMM to perform certain specified analyses on behalf of the state commission and having the IMM prepare reports on such issues. This option is envisioned in Section 9.2 of the Plan which provides that the IMM shall prepare reports “on any matters within its purview as may be requested by . . . any of the Interested Government Agencies.” This option is very important to state commissions such as the ICC and must not be constrained in any way.

Unfortunately, the Plan’s data and information confidentiality policy may dramatically restrict the value of the ostensible Section 9.2 option as explained below in Section V. The ICC has proposed language in Section V below to address these problems.

### **C. State Commission Role in Assisting FERC in Selecting and Overseeing the Market Monitor**

As the ICC explained in Section II.B above, the current process for selecting a market monitor is flawed. As the ICC also explained in Section II.B above, the process for overseeing the work of the market monitor is also flawed. The ICC proposed a mechanism in Section II.D above to address these flaws. In general, the ICC's proposed method would involve the FERC in selecting and overseeing the market monitor. The ICC's proposal describes the important role of stakeholders and other interested parties in market monitor selection and oversight. However, state commissions should not be treated merely as another stakeholder. Because of their unique expertise and role as defenders of the public interest with respect to retail electric issues, state commissions can play a valuable role in partnership with FERC in selecting and overseeing the market monitor. As the Commission revises its market monitoring policy, provisions should be made to include state commissions in all aspects of the market monitor selection and oversight process.

## **V. SPECIFIC CLARIFICATIONS AND PROPOSED REVISIONS OF PLAN LANGUAGE NOT COVERED IN DISCUSSION ABOVE**

This Section of the ICC's Comments contains specific requests for clarification and proposed revisions to language in the Plan. This Section is intended to cover clarifications and revisions that were not covered in the ICC's substantive discussion in Sections II through IV above.

### **Section 1.2:**

The meaning of the phrase "or facilitated by" as used in the first sentence of Section 1.2 is not clear:

"The IMM will monitor the markets that are operated by or services provided by the Cooperating RTOs, including the imbalance energy market, any congestion management market or system, any ancillary services market, any market for the purchase or sale of transmission rights, and any other market administered, coordinated **or facilitated by** the Cooperating RTOs."

It could be argued that all electricity markets, including bilateral markets, are “facilitated” by the operations of the Cooperating RTOs. The ICC is not necessarily opposed to such an interpretation. However, clarity in the Plan, to the extent it can be achieved, will remove unnecessary uncertainty among market participants and interested parties. The meaning of the words “or facilitated by” should be clarified.

### **Section 1.3**

Section 1.3 should be modified to include transmission owners and independent transmission companies as follows:

#### **1.3 Persons and Entities Subject to the Plan**

The Cooperating RTOs, the IMM, transmission owners, independent transmission companies and any person or entity participating in any of the Cooperating RTOs’ markets or that takes service under or is a party to any tariff or agreement administered by the Cooperating RTOs, shall be subject to the terms, conditions and obligations of this Plan.

Although transmission owners and independent transmission companies may not be market participants according to the definition in Section 2.2, they may, nevertheless, significantly affect market conditions within the area to be monitored by the IMM, and should, therefore, be subject to the Plan.

### **Section 3.1:**

Delete the phrase “, to carry out the functions described in this Plan” from the first sentence in Section 3.1 as follows.

The Cooperating RTOs shall establish a Market Monitoring Committee, consisting of one representative appointed by each Cooperating RTO, ~~to carry out the functions described in this Plan.~~

It is not clear what “functions” this phrase applies to. If the phrase is meant to be restricted to the MMC responsibilities in Section 3.2, that should be made clear.

**Subsection 3.1(4):**

Delete subsection 3.1(4) in its entirety as follows:

~~(4) Coordinate the evaluation of the need for corrective measures, including but not limited to rule or tariff changes;~~

This subsection inappropriately suggests that the MMC will play a substantive role in the IMM's analyses, findings, and reporting concerning the need for corrective measures, especially tariff changes. Subsection 5.1(6), on the other hand, properly provides that the IMM's recommendations for "corrective actions" will be submitted to FERC. Because it is inappropriate for the MMC to have the substantive authority suggested by Subsection 3.1(4) and because retaining Subsection 3.1(4) would conflict with Subsection 5.1(6), the deletion recommended here is appropriate.

**Section 4.1:**

Delete the final sentence in Section 4.1 as follows:

~~The IMM shall interface with the Market Monitoring Committee.~~

This sentence serves no useful purpose.

**Subsection 4.3(1):**

Delete the words "Advise the Cooperating RTOs, and shall prepare" and replace them with "Prepare" in Subsection 4.3(1) as follows.

~~(1) Advise the Cooperating RTOs, and shall prepare~~Prepare and submit to FERC the reports specified herein, on the nature and extent of, and any impediments to, competition in and the economic efficiency of the Cooperating RTOs' Markets and Services;

The market monitor should not be put in the position of working for the RTO, i.e., advising the RTO. The RTO should have its own separate Staff for that purpose.

**Subsection 4.3(3):**



Delete the words “to the Cooperating RTOs” so that Subsection 4.3(3) reads:

(3) Recommend ~~to the Cooperating RTOs~~ modifications to market rules, tariffs, or other corrective actions to improve the competitiveness or efficiency of the Cooperating RTOs’ Markets and Services;

The market monitor should not be put in the position of working for the RTO, i.e., making recommendations to the RTO. The RTO should have its own separate Staff for that purpose.

**Subsection 4.3(4):**

First, delete the words “to the Cooperating RTOs”. Second, delete the words “between the” and replace them with “within”. Third, insert the phrase “and between the Cooperating RTOs and other regions” after the word “areas”. With these three changes, Subsection 4.3(4) should read:

(4) Recommend ~~to the Cooperating RTOs~~ modifications to market rules or tariffs to improve the compatibility of the Cooperating RTOs’ Markets and Services or improve the efficiency of trading ~~between~~ within the Cooperating RTOs’ areas and between the Cooperating RTOs and other regions; and

First, the market monitor should not be put in the position of working for the RTO, i.e., making recommendations to the RTO. The RTO should have its own separate Staff for that purpose.

Second, the IMM’s focus should not be strictly limited to the Cooperating RTOs’ areas, but should expand to encompass certain seams aspects between the Cooperating RTOs and other RTOs.

**Subsection 4.3(5):**

This subsection references the amendment of the Plan. However, there is no stated process for Plan amendment. This oversight must be addressed.

**Section 6.1:**

Insert the following language at the end of the first sentence in Section 6.1 so that it reads:

For purposes of carrying out its responsibilities under this Plan, the IMM shall have access to data or other information gathered or generated by the Cooperating RTOs in the course of their operations or otherwise in the possession of the Cooperating RTOs, or that the Cooperating RTOs are reasonably able to generate, produce, or acquire. In addition, the Cooperating RTOs shall gather from market participants all data and information that the Cooperating RTOs are authorized to gather to the extent a request for such information is submitted to the Cooperating RTO from the IMM. The Cooperating RTOs shall make all reasonable efforts to electronically transfer the data and information described in this Section in a real-time or near-time manner designed to interface with the IMM's data and information storage and analysis programs.

First, it is overly restrictive to limit the class of data that the IMM may receive from the RTO to that which is “gathered or generated” by the RTO “in the normal course of their operations.” Rather, the IMM should have access to any needed information that is in the possession of the RTO, regardless of whether the RTO came into possession of that information through “the normal course of their operations.” The Commission may find it appropriate to address in its generic rulemaking proceeding (RM01-12) the extent of data and information to be transferred from the RTO to the market monitor.

Second, it is not unreasonable for the IMM to expect the RTO to expend some reasonable effort to generate, produce, or acquire data and information needed by the IMM.

Third, the IMM should be able to use the RTO as its data collection agent for obtaining data from market participants, to the extent that the RTO is authorized to collect the data from the market participants. This provision is very important given the mountain-sized barricades set up by Section 6.2 of the Plan to block the IMM from obtaining data and information from market participants.

Fourth, timely electronic transfer of the data and information described in Section 6.1 from the Cooperating RTOs to the IMM will improve efficiency and assist the IMM to perform its duties.

## **Section 6.2:**

The title to Section 6.2 should be expanded to include transmission owners and independent transmission companies as follows.

### **6.2 Data from Market Participants, Transmission Owners, and Independent Transmission Companies**

Although transmission owners and independent transmission companies may not be market participants according to the definition in Section 2.2, they may, nevertheless significantly affect market conditions within the area to be monitored by the IMM. This change will also make Section 6.2 consistent with the introductory language in Addendum A.

## **Subsection 6.2.1:**

Insert at the end of the last sentence, “, in cases where a confidentiality agreement applies” so that Subsection 6.2.1 reads as follows:

If the IMM determines that additional data or other information is required to accomplish the objectives of the Plan, the IMM may request the persons or entities possessing, having access to, or having the ability to generate or produce such data or other information to furnish it to the IMM. Any such request shall be accompanied by an explanation of the need for such data or other information, a specification of the form or format in which the data is to be produced, and an acknowledgment of the obligation of the IMM to maintain the confidentiality of the data, in cases where a confidentiality agreement applies.

Subsection 6.2.1, as written in the Plan, reflects an implicit assumption that all information the IMM receives from market participants requires confidential treatment. Such a presumption is unwarranted and should be removed.

## **Subsection 6.2.2(a)(ii):**

Delete the words “not readily available from some other source that is more convenient, less burdensome and less expensive,”. Replace them with: “not unduly burdensome or unduly expensive to produce,” so that Subsection 6.2.2(a)(ii) reads as follows.

(ii) reasonably necessary to achieve the purposes or objectives of this Plan, ~~not readily available from some other source that is more convenient, less burdensome and less expensive,~~ not unduly burdensome or unduly expensive to produce, and not subject to an attorney-client privilege.

First, a market participant should not be permitted to put forth as a defense against the production of data needed by the IMM the argument that the data is available to the IMM through some other source. Second, the burden and cost standard for the type of data addressed in Section 6.2.2(a)(ii) (data not covered by Addendum A) should be the same as that in Section 6.2.2(a)(i) (data covered by Addendum A). The ICC’s proposed revision accomplishes these needed changes.

**Subsection 6.2.2(b):**

Modify the third and fourth sentence as follows:

The IMM shall notify the Market Participants and other interested parties, and provide an opportunity for comment, prior to ~~creating such list or to adding or deleting any categories of data or information to or from the list~~ Addendum A. ~~The list shall be attached as an addendum to this Plan.~~

These changes are necessary to reflect the existence of Addendum A.

**Subsection 6.2.2(d):**

Modify the first sentence as follows:

The party from whom the information has been requested may invoke the dispute resolution provisions of the Cooperating RTOs, if applicable, to determine the IMM’s right to obtain requested information ~~not contained on the foregoing list~~ covered by Addendum A.

This change is necessary to reflect the existence of Addendum A.

**Section 6.3:**

Section 6.3 should be modified as follows:

6.3 Access to Data by Interested Government Agencies

The IMM shall provide data and information upon request to the FERC. Upon request for data or information that the IMM received from a Cooperating RTO by a State regulatory agency, the IMM shall provide the data or information ~~consistent with the information policy of the Cooperating RTO that had provided the data to the IMM.~~ Upon request from a State regulatory agency for confidential data or information that the IMM received from a market participant, the IMM shall ~~promptly notify the participant provided that the data and shall not release the confidential data or information without prior written consent from the participant~~ provide such data and information upon receipt of a signed protective order or other procedure for protecting confidential data.

First, State regulatory agencies must have unrestricted access to all data and information that the IMM gathers from the Cooperating RTOs. It should not be presumed that data and information gathered by the IMM from the Cooperating RTOs requires confidential treatment. The reference in Section 6.3 to “the information policy of the Cooperating RTO that had provided the data to the IMM” is inappropriate and should be deleted. Furthermore, if reference to an “information policy” is retained, the applicable information policy must be incorporated into the Plan and not remain as some unidentified outside document.

Second, it is improper and contradictory for Section 6.3 to give a market participant veto authority over the data and information that the IMM may give to a State regulatory agency. The last sentence of Section 6.4 provides that State regulatory authorities may obtain from the IMM a market participant’s confidential data and information pursuant to a protective order or other procedure. That mechanism is acceptable to the ICC and should be included in Section 6.3 as well. As Section 6.3 is currently written, it is improper and it contradicts the provisions of Section 6.4.

**Section 6.4:**

Section 6.4 should be modified as follows:

#### **6.4 Confidentiality**

The IMM shall use all reasonable procedures necessary to protect and preserve the confidentiality of all information obtained in connection with the implementation of this Plan. Confidential information shall include data or information that is proprietary, commercially valuable or competitively sensitive, or is a trade secret and that has been designated as confidential by a participant, provided that such information is not available from public sources, is not otherwise subject to disclosure under any tariff or agreement administered by the Cooperating RTOs. Interested parties shall have recourse to dispute resolution procedures, the administrative procedures of the FERC, and any other applicable source of relief to challenge a market participant's self-designation of data and information as confidential. Except as may be required by subpoena, other duly authorized process, or other compulsory process, the IMM shall not disclose confidential information to any person or entity without prior written consent (except FERC and state regulatory agencies shall have access to data and information as described in Section 6.3). Upon receipt of a subpoena or other compulsory process for the disclosure of confidential information, the IMM shall promptly notify the party that provided the data and shall provide all reasonable assistance requested by the party to prevent disclosure, and shall not release the data until the party provides written consent or until the party's legal avenues are exhausted. The confidentiality of data and information provided to ~~Interested Government Agencies~~ State regulatory agencies will be maintained with a protective order or other procedures of the agency for protecting confidential data.

First, it is not proper for the Plan to permit a market participant to self-designate the data and information that it is required to provide to the IMM as confidential without giving interested parties an avenue for challenging that self-designation.

Second, the sentence in Section 6.4 addressing disclosure of confidential data and information "to any person or entity" contradicts Section 6.3 with respect to the access granted to FERC and State regulatory agencies. The ICC's proposed language corrects this contradiction.

Third, the reference to "Interested Government Agencies" in the last sentence of Section 6.4 contradicts with provisions in Section 6.3. The reference should be to "State regulatory agencies." The ICC's proposed change corrects this error.

#### **Subsection 6.5(a):**

Subsection 6.5(a) should be modified as follows:

The IMM shall regularly collect and maintain the information necessary for implementing this Plan. The IMM, ~~in conformity with the Cooperating RTOs' applicable data retention policies,~~ shall adopt and make part of this Plan schedules for the periodic destruction of information in the possession of the IMM the retention of which is no longer reasonably necessary for purposes of this Plan. The IMM ~~or Cooperating RTOs~~ shall ensure that data and information necessary for the subsequent IMM shall be retained in usable form.

First, it should be the responsibility of the IMM, in cooperation with all interested parties, to develop and make part of the Plan acceptable schedules for the periodic destruction of data in the possession of the IMM that is no longer needed. This important function should not be exposed to unidentified and unspecific RTO data retention policies.

Second, the burden for ensuring that data and information needed by subsequent IMM is retained by the current IMM should be placed, by contract, on the current IMM. This is not a proper RTO function.

#### **Section 7.2:**

The word “shall” should be changed to “may” in the last sentence of Section 7.2 as follows.

The IMM ~~shall~~may provide Market Participants and other interested parties the opportunity to comment on any new indices and screens prior to their adoption.

There is no legitimate reason why the IMM should be required to provide interested parties an opportunity to comment on new indices and screens prior to their employment by the IMM. Time may be of the essence in certain circumstances where new indices and screens may be necessary. The comment process required by Section 7.2 could unduly delay the IMM from conducting necessary and proper analyses.

#### **Addendum A:**

1.

The title of Addendum A should be modified to insert the word “Routinely” between “May” and “Request” as follows:

**LIST OF DATA THE IMM MAY ROUTINELY REQUEST FROM MARKET PARTICIPANTS**

This modification of the title is appropriate to reflect the characterization in Section 6.2.2(b) of the Addendum A data as “routine provision.” Similarly, Section 6.5 states that the IMM shall “regularly collect” data and information necessary to implement the Plan.

**2.**

The first paragraph in Addendum A should be modified as follows:

The following data or information may be obtained by the IMM from Market Participants, transmission owners, ~~or the Cooperating RTOs and independent transmission companies~~ in accordance with § 6.2.2(a)(i) of the Market Monitoring Plan. Market Participants, transmission owners, ~~or the Cooperating RTOs and independent transmission companies~~ shall retain the following categories of data or information for at least two years, ~~beginning with the date of initial operation from the date of its generation.-~~

First, according to Section 6.1 and 6.2, data and information to be submitted by the Cooperating RTOs to the IMM is not to be provided subject to the requirements of Addendum A. Rather, data and information to be submitted by the Cooperating RTOs to the IMM by the Cooperating RTOs is to be provided pursuant to the terms of Section 6.1. Inclusion of any reference to Cooperating RTOs in Addendum A is improper and sets up conflicts with Section 6.1.

Second, Addendum A is only applicable to data and information requested by the IMM under Section 6.2.2(a)(i), rather than to all Section 6.2.2 data and information as Addendum A now incorrectly reads. As pointed out in the paragraph above, Addendum A is not applicable to data and information to be submitted by the Cooperating RTOs to the IMM under Section 6.1. Neither is Addendum A applicable to data and information to be submitted by market



participants under Section 6.2.2(a)(ii). The current language of Addendum A in this regard, is incorrect, and will only cause unnecessary conflicts and confusion if not corrected.

Third, the meaning of the phrase “beginning with the date of initial operation” is not clear. Addendum A is not a snap-shot. It is to be applicable to data and information under Section 6.2.2(a)(i) on a going-forward basis. The Addendum A language should reflect this reality as proposed by the ICC above.

**3.**

Numbered paragraph 2 of Addendum A should be modified as follows:

2. Opportunity costs - Data or information relating to regulatory, environmental, technical, operational, or other restrictions that limit the run-time, ramp rates or other operating characteristics of a generating unit.

These changes are useful to highlight the operational characteristics of generating units.

**4.**

A new numbered paragraph 5 is required. That paragraph should read as follows:

5. Financial Positions - Data or information related to financial positions or financial contracts for power or transmission service.

It is vital that the IMM have this kind of financial and contract information to explain aberrational behavior by market participants that may not constitute the exercise of market power. For example, the third paragraph of Section 1.1 correctly notes that “conduct that might under some circumstances suggest an attempt to exercise market power is, under other circumstances, pro-competitive and efficient.” It is critical that market participants not be charged with market power wrong-doing under these pro-competitive and efficient circumstances. However, in order to be able to distinguish between these negative and positive circumstances, the IMM must have access to financial contracts and financial positions of the market participants.

The third paragraph of Section 1.1 states that the IMM will not examine the physical and financial positions of market participants in an effort to discern their “intent” in engaging in certain behavior. The ICC has no dispute with this IMM decision not to examine “intent.” However, the third paragraph of Section 1.1 also states that the IMM will examine “conduct” of market participants. The ICC supports that proposal. However, the IMM will need routine access to market participants’ financial contracts and financial positions in order to be able to explain market participant conduct and to distinguish when that conduct is pro-competitive and efficient and when it constitutes an exercise of market power. Consequently a paragraph, such as that recommended here by the ICC, addressing financial contracts and financial positions must be added to Addendum A in order for the IMM to actually complete the tasks that Section 1.1 of the Plan commits the IMM to completing.

## **VI. CONCLUSION**

**WHEREFORE**, for all the aforementioned reasons, the ICC respectfully requests that the Commission take these Comments into account and: (1) clarify the Plan’s description of “market power” as recommended in Section III.B; (2) revise the Plan to include limited market power mitigation authority for the market monitor as described in Section III.D; (3) modify the Plan to ensure clear access by State commissions to market monitor data and information as described in Section IV.B; and (4) modify the Plan language in all of the areas discussed in Section V. The ICC also recommends that the Market Monitoring Plan not be given final approval, either for the Midwest ISO or the Alliance Companies, until the modifications to the basic market monitoring framework described by the ICC in Section II of these Comments is addressed by the Commission and corrected by the applicants. The ICC also seeks any and all other appropriate relief.

November 19, 2001

Respectfully submitted,

**ILLINOIS COMMERCE COMMISSION**

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